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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of  
  
Further Forbearance from  
Title II Regulation for Certain Types of  
Commercial Mobile Radio Service Providers

)  
) GN Docket No. 94-33  
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**JUN 27 1994**

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**COMMENTS OF  
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

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## SUMMARY

CTIA supports the Commission's tentative conclusion to refrain from exercising its forbearance authority in the application of Sections 210, 213, 214, 218, 219, 220, 223, 225, 226, 227, and 228 to all CMRS providers. Congress and the Commission have created a comprehensive federal scheme for CMRS whereby similar services are subject to consistent regulatory treatment. To exempt certain types of CMRS providers from these Title II Sections would only recreate the very structure of disparate regulations for substitutable services that Congress sought to abolish in amending Section 332(c) of the Communications Act and the consistent regulatory treatment envisioned by the Commission's *Second Report and Order* on the regulatory treatment of mobile services. Furthermore, such exemptions would be contrary to the congressional intent in adopting the consumer protection provisions of these Title II Sections. By continuing its application of these Title II Sections to all CMRS providers, the Commission will maintain the federal scheme of regulatory parity that Congress and the Commission have established for the CMRS industry and preserve important consumer safeguards.

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The Cellular Telecommunications Industry Association ("CTIA")<sup>1</sup> respectfully submits its comments on the Notice of Proposed Rule Making in the above-captioned proceeding.<sup>2</sup>

**I. Introduction**

In the *Second Report and Order*,<sup>3</sup> the Commission determined that it should forbear from enforcing certain Sections of Title II of the Communications Act with respect to CMRS providers. On April 20, 1994, the Commission adopted a Notice of Proposed Rule Making to address whether further forbearance from particular Title II Sections<sup>4</sup> are warranted for certain types of commercial mobile radio service ("CMRS") providers. Among other issues, the Commission seeks comments

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<sup>1</sup> CTIA is a trade association whose members provide commercial mobile services, including over 95 percent of the licensees providing cellular service to the United States, Canada, Mexico, and the nation's largest providers of ESMR service. CTIA's membership also includes wireless equipment manufacturers, support service providers, and others with an interest in the wireless industry. CTIA and its members have a direct and vital interest in the outcome of this proceeding.

<sup>2</sup> *In the Matter of Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers*, GN Docket No. 94-33, FCC 94-101, 9 FCC Rcd 2164 (released May 4, 1994)("Notice").

<sup>3</sup> *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, Gen. Docket No. 93-252, FCC 94-31, 9 FCC Rcd 1411 (released March 7, 1994)("Second Report and Order").

<sup>4</sup> Sections 210, 213, 214, 218, 219, 220, 223, 225, 226, 227, and 228.

on whether limiting further forbearance to subcategories of CMRS providers would undermine the regulatory symmetry and the regulatory scheme established by Congress and the Commission; and whether further forbearance from certain Title II sections would undermine the congressional intent and the Commission's interpretation of that intent for adopting such provisions.

CTIA urges the Commission not to undermine the recently established structure of regulatory parity for CMRS by allowing exemptions for certain classes of CMRS providers. In the past year, Congress and the Commission have created a comprehensive federal scheme for CMRS whereby similar services are subject to consistent regulatory treatment. To start exempting certain classes of CMRS providers from the Title II Sections addressed in these comments would risk recreating the very structure of disparate regulations for substitutable services that Congress sought to abolish in amending Section 332(c) of the Communications Act and the consistent regulatory treatment envisioned by the *Second Report and Order*. It also would be contrary to the congressional intent in adopting the consumer protection provisions of Title II.

## **II. Application of Further Forbearance**

### **A. Section 210: Franks and Passes**

Section 210 permits carriers to issue franks and passes to their employees and to provide the government with free service "in preparation for the national defense."<sup>5</sup> In the *Notice*, the Commission states that it sees no purpose in forbearing from application of this section and tentatively concludes that Section 210 does not trigger any special concerns for small businesses.

CTIA supports the Commission's decision to not forbear from applying Section 210 to all CMRS providers. Application of this Section does not impose any affirmative regulatory

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<sup>5</sup> 47 U.S.C. § 210.

obligations upon CMRS providers. Rather, Section 210 alleviates potential restrictions on activities that are potentially beneficial to employees and the country's national defense. Accordingly, forbearance from the application of Section 210 is unnecessary.

**B. Sections 213, 215, 218, 219, and 220: Reservations of Commission Authority**

The Commission characterizes the above provisions as reservations of Commission authority and tentatively concludes that forbearance from application of these Sections to CMRS is unnecessary.<sup>6</sup>

These provisions support the Commission's enforcement powers. CTIA agrees that these provisions presently do not create affirmative regulatory obligations nor do they have an immediate economic impact on any CMRS providers, including small entities.

The Commission has stated that it soon will initiate a rule making proceeding to address the information collection requirements for cellular carriers, including the establishment of monitoring provisions applicable to cellular licensees.<sup>7</sup> If appropriate, the Commission can revisit the forbearance of Section 219 and the other Sections in the future rule making proceeding.

**C. Section 223: Obscene, Harassing, Indecent Communications**

In the *Notice*, the Commission tentatively reaffirms its decision to continue to apply Section 223 to CMRS, because it does not unduly burden any type of CMRS provider in view

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<sup>6</sup> Section 213 authorizes the Commission to make valuations of carrier property. Section 215 provides the Commission with the authority to examine management of a carrier and its owner. Section 219 authorizes the Commission to require annual reports from carriers while Section 220 grants the Commission discretionary authority to prescribe the forms of accounts, records, and memoranda to be kept by carriers, as well as depreciation rates. See 47 U.S.C. §§ 213, 215, 219, and 220. In the *Second Report and Order*, the Commission decided not to take immediate action to exercise its authority under these statutory sections. See *Second Report and Order*, ¶¶ 192-193.

<sup>7</sup> *Second Report and Order*, ¶¶ 194 and 285.

of "the important public interest in protecting minors embodied in Section 223, and the care taken to tailor [its] implementing regulations narrowly."<sup>8</sup> Furthermore, the Commission notes that a CMRS provider's decision to provide billing and collection services for an adult information provider is a voluntary business decision: CMRS providers are only subject to Section 223's requirement that they restrict access to children and non-consenting adults via "reverse blocking" only if CMRS providers voluntarily enter this business.<sup>9</sup>

CTIA endorses the Commission's decision to not forbear from the application of Section 223. CTIA agrees that this Section is not unduly burdensome in view of the statutory mandate to protect children and non-consenting adults from indecent telephone communications. Any exemption from Section 223 requirements undermines the national policy that Congress set forth in the adoption of Section 223. It also undermines the Commission's carefully designed and narrowly tailored regulatory approach to implement the will of Congress and the United States Supreme Court to protect minors while providing a mechanism by which those adults who affirmatively request the service may receive it, *i.e.*, the reverse blocking requirement.<sup>10</sup> Moreover, to exempt any CMRS provider from Section 223 requirements would be contrary to the U. S. Supreme Court's finding that the protection of minors from indecent communications is a compelling government interest.<sup>11</sup>

The impact of Section 223 on existing and projected CMRS offerings is not unduly burdensome, because it requires a CMRS provider to use a reverse blocking mechanism only if

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<sup>8</sup> Notice, ¶ 13.

<sup>9</sup> *Id.*

<sup>10</sup> See *In the Matter of Regulations Concerning Indecent Communications by Telephone*, 5 FCC Rcd 4926 (1990); See also *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115 (1989) (finding a compelling government but rejecting the previous version of the statute as not sufficiently narrowly tailored to serve such interest).

<sup>11</sup> *Sable Communications*, 492 U.S. at 126.

the provider affirmatively chooses to perform billing and collection services for an adult information provider. The statute does not require a carrier to provide billing and collection services for the adult information provider. If a CMRS provider, including a small entity, chooses to provide such services, it is a voluntary business decision in which the CMRS provider, not the Commission, must evaluate the associative benefits and burdens, including the regulatory obligations of Section 223.

**D. Section 225: Telecommunications Relay Services (TRS)**

In the *Notice*, the Commission requests additional information on whether the obligation to provide TRS and to contribute to the interstate TRS fund should apply to all classes of CMRS providers.

CTIA believes that the obligation to provide TRS and to contribute to the interstate TRS Fund should apply to all classes of CMRS providers for two primary reasons. First, the Commission cannot justify forbearance from the application of Section 225 for any CMRS provider in view the extensive record it has compiled delineating the congressional mandate and the public policy for providing telecommunications relay service and access to consumers with hearing and speech disabilities.<sup>12</sup> To exempt certain classes of CMRS providers from Section 223 would undermine the congressional intent of the Americans with Disabilities Act of 1990 ("ADA") and the Commission's implementing regulations to "further the goal of the ADA to provide functionally equivalent telecommunications services for all Americans."<sup>13</sup>

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<sup>12</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (TRS I)*, 6 FCC Rcd 4657 (1991); *TRS II*, 8 FCC Rcd 1802 (1993); *TRS III*, 8 FCC Rcd 5300 (1993); *TRS IV*, 58 Fed. Reg. 53663, (October 18, 1993); *TRS V*, 9 FCC Rcd 1783 (1994).

<sup>13</sup> *TRS V*, 9 FCC Rcd at 1784.



This is especially true since providing TRS and paying into the TRS fund impose minimal burdens, even for small CMRS providers.

Second, to exempt certain classes of CMRS providers from TRS obligations would undermine the consistent regulatory treatment of comparable mobile services envisioned by Congress and the Commission when it established a comprehensive federal scheme.

**E. Section 226: Telephone Operator Consumer Services Improvement Act (TOCSIA)<sup>14</sup>**

In the *Notice*, the Commission requests additional information in order to compile a record on whether forbearance from Section 226 for certain classes of CMRS providers is justified.

CTIA reiterates that to exempt certain classes of CMRS providers from TOCSIA requirements undermines the comprehensive regulatory scheme that Congress and the Commission have designed for consistent regulatory treatment of CMRS. Furthermore, such an exemption creates not only regulatory disparity but also contravenes the statutory mandate and protection that Congress and the Commission already have determined should be afforded to consumers who need to use interstate operator services from public telephones.<sup>15</sup>

Similar to the other Title II Sections which are consumer-oriented provisions, there is no requirement that carriers must offer operator services. Section 226 obligations are not imposed unless the CMRS provider affirmatively chooses to provide such services. Again, such choices are voluntary business decisions which each provider, large and small, must

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<sup>14</sup> Section 226 protects consumers, who make interstate operator service calls from telephones available to the public or transient users against unreasonable high rates and anti-competitive practices. 47 U.S.C. § 226.

<sup>15</sup> H.R. Rep. No. 101-213, 101st Cong., 1st Sess. (1989); S. Rep. No. 101-439, 101st Cong., 2d Sess (1990); *In the Matter of Policies and Rules Concerning Operator Service Providers*, 6 FCC Rcd 2744 (1991); *In the Matter of Policies and Rules Concerning Operator Service Providers, Order on Reconsideration*, 7 FCC Rcd 3882 (1992).

determine whether the benefits of offering operator services outweighs the burden of complying with the requirements of Section 226.

CTIA acknowledges that several parties, particularly GTE, have insisted that the application of Section 226 is not necessary for certain services, (*e.g.*, Airfone, Railfone, and card reader cellular phones in rental car fleets), to ensure just and reasonable rates or to protect consumers. They contend that such services historically have not been subject to the abusive practices which TOCSIA was intended to prevent, *i.e.*, call splashing, failure to disclose the presubscriber operator service provider, and unreasonable rates. While CTIA strongly supports consistent regulatory treatment of CMRS, CTIA acknowledges that the nature of each service including the unique technical capabilities, the sophistication of the users, and the adherence to certain labeling requirements, warrants selective further forbearance of the application of Section 226 to such services. CTIA urges the Commission to focus on the nature of the service, and not the class of CMRS provider which seeks exemption from Section 226.<sup>16</sup>

**F. Section 227: Telephone Consumer Protection Act of 1991 (TCPA)**

Section 227 protects consumers from unsolicited telephone calls and facsimile transmissions by restricting the use of certain telephone equipment to send unsolicited advertisements.<sup>17</sup> In the *Notice*, the Commission tentatively has determined that forbearance for small CMRS providers from application of Section 227 would not adequately protect the privacy interests of consumers under the second prong of the Section 332 test. Like billing

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<sup>16</sup> A service specific approach to forbearance of Section 226 would best further the consumer protection of TOCSIA. Otherwise, a small CMRS provider with a total capacity of only ten voice circuits could enable a truck stop with only ten pay phones to evade completely requirements of Section 226.

<sup>17</sup> 47 U.S.C. § 227. TCPA requirements apply to the originator of the unsolicited message, such as telemarketers. Generally, the statute does not apply to a CMRS provider, unless the provider engages in telemarketing or sends unsolicited communications via certain telephone equipment.

and collection services and operator services, the decision to undertake telemarketing services is a voluntary business decision on the part of a CMRS provider, and as the Commission has recognized, such services are not an essential part of what is generally considered as CMRS. The Commission also notes that there is no public interest benefit under the third prong of the test in permitting CMRS providers, including small ones, to undertake such activities without complying with TCPA.

CTIA endorses the Commission's tentative views on this issue and supports its decision not to forbear from application of Section 227 to all CMRS providers, including small CMRS providers. If the Commission creates an exemption from Section 227 requirements for small CMRS providers, such action would create a strong incentive for a telemarketer to use a small CMRS provider, who can provide the small number of lines needed to find a network arrangement, to send unsolicited advertisements to targeted consumers. Thus, forbearance from application of Section 227 to a particular class of CMRS providers would create a significant loophole in which a telemarketer could evade the statutory mandate to protect consumers from unsolicited telephone calls and facsimile transmissions.

**G. Section 228: Pay-Per-Call Services/Telephone Disclosure and Dispute Resolution Act (TDDRA)<sup>18</sup>**

The Commission tentatively has determined that enforcement of TDDRA does not impose unreasonable burdens on CMRS providers and affords significant protection to consumers. The Commission notes that most of the TDDRA obligations primarily affect interexchange carriers, rather than CMRS providers, because the interexchange carriers assign

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<sup>18</sup> Section 228 regulates a carrier's offering of pay-per-call services by imposing certain reporting and information requirements on carrier's that by tariff or contract assigns a 900 number to pay per call service provider. In general, Section 228 is designed to protect consumers against abusive practices by pay-per-call service providers. 47 U.S.C. § 228.

900 numbers to a 900 service. Because CMRS do not have the ability to assign 900 numbers, they are not subject to TDDRA obligations. The Commission requests comment on whether the local exchange carrier's obligation to permit subscribers to block access where technically feasible should apply to CMRS and whether there are particular types of CMRS providers for which such an obligation would be difficult.<sup>19</sup>

CTIA supports the Commission's decision in the *Second Report and Order* to continue its application of Section 228 to all CMRS providers. CTIA agrees that most of the TDDRA obligations, including the LEC obligation to block access, do not affect CMRS providers because they do not assign the 900 numbers. If a CMRS provider chooses to bill and collect for 900 services, the strong public policy of protecting consumers against abusive practices by pay-per-call service providers dictates that Section 228 requirements apply to CMRS.

In its implementation of TDDRA, the Commission compiled a thorough record delineating the congressional mandate for regulatory policies and rules to address such abusive practices.<sup>20</sup> Further forbearance from the TDDRA requirements for certain classes of CMRS providers would only undermine the clear congressional intent.

### **III. CMRS Providers Meriting Further Forbearance**

Congress and the Commission correctly have designed and implemented a comprehensive scheme for CMRS. The Commission should not exercise its forbearance authority to provide exemptions for certain CMRS providers based on size or any other class-based distinctions, particularly in view of the Commission's section-by-section analysis of Title II which has identified so many important public policy goals that argue against any further forbearance.

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<sup>19</sup> Notice, ¶ 30.

<sup>20</sup> *In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, 8 FCC Rcd 6885 (1993).

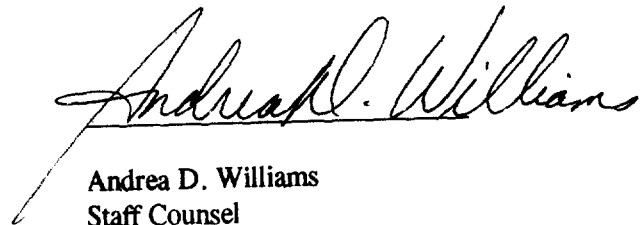
In amending Section 332(c), Congress sought to achieve uniform rules and regulatory symmetry among similarly situated mobile services. Regulatory disparities based on size, particularly a provider's net worth, its average revenues per subscribers, or its percentage of interconnection traffic, contravenes the congressional intent of Section 332(c) and risks returning the CMRS industry to the dual regulatory approach which Congress abolished when it amended Section 332(c). The Commission should focus instead on the nature of the services rather than the provider of such services.

CTIA acknowledges that unique circumstances and facts may arise which could warrant further forbearance for certain services. In these instances, the provider of such services may petition the Commission on a case-by-case basis to determine whether forbearance is warranted. This procedure would provide the Commission with an opportunity to evaluate thoroughly the unique facts and circumstances of a particular service and to apply the three-prong forbearance test to the service.

#### IV. Conclusion

For the foregoing reasons, CTIA endorses the Commission's tentative conclusion to refrain from exercising its forbearance authority in the application of Sections 210, 213, 214, 218, 219, 220, 223, 225, 226, 227, and 228 to all CMRS providers. Such action will maintain the federal scheme of regulatory parity that Congress and the Commission so recently have established for the CMRS industry, as well as preserve the important consumer safeguards provided by these Sections.

Respectfully submitted,



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**Certificate of Service**

I, Stacie A. Brooks, hereby certify that on this 27th day of June, 1994, copies of the foregoing Comments of the Cellular Telecommunications Industry Association were served by hand delivery upon the following parties:

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